IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6024 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HF JOSHI

Versus

STATE OF GUJART

Appearance:

1. Special Civil Application No. 6024 of 1999

MR AS SUPEHIA for Petitioner No. 1

MS HANSA PUNANI ASSTT GOVERNMENT PLEADER for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 23/10/2002

ORAL JUDGEMENT

#. The petitioner herein has challenged the order of punishment imposed by the respondent - State as a result of a disciplinary inquiry, whereby the petitioner's

pension was reduced by an amount of Rs.150/per month for a period of one year.

#. On behalf of the petitioner it was contended that the above mentioned punishment imposed on him is contrary to and violative of the provision of Rule 189-A of the Bombay Civil Services Rules. It is not disputed on behalf of the respondents that the punishment referred to above has in fact been imposed under the said Rules.

2.1 The contention raised is based upon Clause [d] of Rule 189-A of the B.C.S.R. which reads as under :

> "[d] The Gujarat Public Service Commission shall be consulted before final orders are passed."

2.2 The petitioner vehemently contends that on the facts of the present case, GPSC has not been consulted before imposing the designated punishment, namely cut in pension. The respondents have also not contested that the GPSC has not been consulted.

2.3 The respondents have raised a contention to the effect that on the facts of the case consultation with GPSC was not necessary. This contention is to the effect that since the petitioner was a Storekeeper holding the post in Class-III category that is to say Non Gazetted post, such consultation with the GPSC would not be necessary in view of the Gujarat State Public Service Consultation Rules, 1960. Special reliance is placed on Clause 16 of the said Consultation Rules, read with Item No.22 of the said Rules.

#. This controversy has been specifically considered and dealt with in the decision of this Court in case of M.R.SHAIKH VS. STATE OF GUJARAT reported at 1999 [1] GLH [UJ] 8.

3.1 Paragraph-3 of the said decision has dealt with precisely this contention and the Court held that the said regulations have no relevance to the present contention as said Rules are attracted in a case there is requirement of consultation in the matter specified in para [a] and [b] of Article 320 of the Constitution of India, but in case of pensioners, a specific provision has been made under the B.C.S.R. for consultation with the GPSC. The net result of the said decision is that where the punishment is of reduction in pension, it necessarily requires consultation with the GPSC, and in absence of such consultation, such an order is null and

void and of no effect.

#. Consequently, the impugned order of punishment of reduction in pension is as aforesaid, null, void and bad in law, and is consequently quashed.

#. It requires to be noted that it is merely the order of punishment which is quashed and set aside. Consequently it shall be open to the disciplinary authority to pass an appropriate order after consultation with the GPSC, or in the alternative pass any other appropriate order of punishment which does not require such consultation, after following the appropriate procedure required under law.

5.1 Since the impugned order of punishment is quashed and set aside, as a consequence thereof, the order that the period of suspension undergone by the petitioner and treated as under suspension also will not survive. The disciplinary authority would be required to apply its mind once again to this aspect and to pass an appropriate order in that context as well.

5.2 Since the order of punishment is, by way of the present judgment and order quashed and set aside, the petitioner would be entitled to a refund of the amount which has already been deducted from his pension.

#. This petition is therefore allowed to the aforesaid extent and Rule is made partly absolute with no order as to costs.

#. It is expected that the respondent shall comply with the present order within three months from the service of the present order upon them. Direct Service permitted.

Date : 23-10-2002 [Y.B.Bhatt, J.]

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